



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MKB/147125

PRELIMINARY RECITALS

Pursuant to a petition filed January 24, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on April 23, 2013, at Waukesha, Wisconsin.

The issue for determination is whether Petitioner is disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: No Appearance, submission of medical file
Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.
2. Petitioner applied for MA as a disabled person, as a condition of satisfying Katie Beckett Medical Assistance (MA) eligibility criteria, in August 2012. The Department denied that application, due to lack of disability. Petitioner timely requested reconsideration, and an unfavorable reconsideration decision from the Department's Disability Determination Bureau (DDB) was issued in January 2013.
3. DDB determined that Petitioner is not disabled because, although her impairment is "severe," it does not meet, medically equal, or functionally equal the severity of a listed impairment. More

specifically, The DDB concluded that Petitioner has marked limitations in the area of acquiring and using information but less than marked limitations in the remainder of the following domains:

- a) acquiring and using information,
 - b) attending and completing tasks,
 - c) interacting in relating with others,
 - d) moving about and manipulating objects
 - e) caring for yourself and
 - f) health and physical well-being.
4. Petitioner is 16 years of age (DOB 05/24/96) and lives in the community with her parents. She is diagnosed with delayed myelination. She is cognitively disabled and has developmental delays as well as speech impairments. She is a sophomore in high school though is academically at about the 5th grade level. Her IQ is 68. She cannot handle money. She cannot drive. Her communication is very simplistic. She is unable to wake up in the morning on her own. She cannot talk to strangers at all. She is very socially naïve, making her vulnerable.
 5. Petitioner's condition does not meet the Listing criteria for §111.00 (neurological) or §112.00 (mental disorders – here, specifically developmental disorders) or §102 (special senses and speech).

DISCUSSION

Petitioner desires to be found eligible for MA services. As a condition of eligibility, she must be found “disabled,” at the level required for federal SSI eligibility.

I. DEFINITION OF CHILDHOOD DISABILITY.

To be considered a disabled person, an applicant must meet the tests used by the Social Security Administration to determine disability for Supplemental Security Income (SSI) benefits. For SSI purposes, a disabled child must have a medically determinable physical or mental impairment, or combination of impairments, that causes marked and severe functional limitation, and that can be expected to last for at least a year. 20 C.F.R. §416.906. More specifically, 20 C.F.R. §416.911(b) states:

If you are a child, a disabling impairment is an impairment (or combination of impairments) that causes marked and severe functional limitations. This means that the impairment or combination of impairments:

- (1) Must meet, medically equal, or functionally equal the requirements of the listings, [appendix 1 of Subpart P of 20 C.F.R., Part 404], or
- (2) Would result in a finding that you are disabled under sec. 416.994a ...

A sequential process is used to apply these definitions to a specific case. 20 C.F.R. §416.924. The first test in the sequence is whether the claimant is performing “substantial gainful activity.” Because Petitioner is not working, she passes this first test.

The second sequential test is whether the claimant has an impairment or combination of impairments that is “severe.” If the impairment is a slight abnormality or a combination of slight abnormalities that causes no more than minimal functional limitations, it is not severe. 20 C.F.R. §416.924(c). The Disability Determination Bureau (DDB) has conceded that Petitioner's impairment is severe, so she passes the second test.

The third sequential test element is the heart of the dispute here. The third test considers whether the child has an impairment(s) that *meets, medically equals, OR functionally equals* in severity any impairment that is listed in Appendix 1 of Subpart P of Part 404 of the regulations (Listings). 20 C.F.R. §416.924(d). DDB determined that Petitioner did not meet this requirement, and that she is therefore not disabled for SSI/MA purposes.

II. PETITIONER'S CONDITION DOES NOT *MEET OR MEDICALLY EQUAL* THE LISTINGS AT SECTION 112.

There are specific sections of the Listings that deal with Petitioner's medical issues: § 102.00 - deals with special senses and speech, §110.00 – deals with neurological issues and § 112.00 - deals with mental health/developmental delay diagnoses. The § 102 criteria were not involved here. These sections can be viewed online at www.ssa.gov/disability/professionals/bluebook/112.00-MentalDisorders-Childhood.htm. Petitioner does not meet the specific Listing criteria. The next question is whether he *functionally equals* an appropriate Listing standard and it is the mental health standards at issue here.

III. PETITIONER'S CONDITION DOES *FUNCTIONALLY EQUAL* THE SECTION 112 LISTINGS.

The Listings describe impairments that are significant enough to cause "marked and severe" functional limitations. This phrase is a term of art in children's disability rules. In general, a child's impairment(s) is of "listing-level severity" if it results in "marked" limitations in two broad areas of functioning, or "extreme" limitations in one such area. 20 C.F.R. §416.925. "Marked" and "extreme" limitation are defined at 20 C.F.R. 416.926a(e). The question here is whether or not Petitioner has marked limitations in the two areas noted above. Marked is defined as:

(2) *Marked limitation.* (i) We will find that you have a "marked" limitation in a domain when your impairment(s) interferes seriously with your ability to independently initiate, sustain, or complete activities. Your day-to-day functioning may be seriously limited when your impairment(s) limits only one activity or when the interactive and cumulative effects of your impairment(s) limit several activities. "Marked" limitation also means a limitation that is "more than moderate" but "less than extreme." It is the equivalent of the functioning we would expect to find on standardized testing with scores that are at least two, but less than three, standard deviations below the mean.

20 C.F.R. 416.926a(e)(2)(i).

As suggested in this definition test scores are not always present and the regulations account for that:

(ii) The medical evidence may include formal testing that provides information about your development or functioning in terms of percentiles, percentages of delay, or age or grade equivalents. Standard scores (e.g., percentiles) can be converted to standard deviations. When you have such scores, we will consider them together with the information we have about your functioning to determine whether you have a "marked" or "extreme" limitation in a domain.

20 C.F.R. 416.926a(e)(1)(ii).

To return to a discussion of whether Petitioner has "marked" limitations in two domains, again, the SSI rule identifies six domains to be reviewed: (1) Acquiring and using information, (2) Attending and completing tasks, (3) Interacting and relating with others, (4) Moving about and manipulating objects, (5) Caring for yourself, and (6) Health and physical well-being. 20 C.F.R. §416.926a(b)(1). The DDB concluded that Petitioner has marked limitations in domain #1 - acquiring and using information, limited to marked in domain #s 2 and 3 and no limitations in domains 4, 5 and 6.

I am reversing the DDB decision. I find that Petitioner has marked limitations in domain # 3 - ***interacting and relating with others***. In this area the federal regulations indicate that the following types of activities are evaluated:

- (i) You do not reach out to be picked up and held by your caregiver.
 - (ii) You have no close friends, or your friends are all older or younger than you.
 - (iii) You avoid or withdraw from people you know, or you are overly anxious or fearful of meeting new people or trying new experiences.
 - (iv) You have difficulty playing games or sports with rules.
 - (v) You have difficulty communicating with others; e.g., in using verbal and nonverbal skills to express yourself, carrying on a conversation, or in asking others for assistance.
 - (vi) You have difficulty speaking intelligibly or with adequate fluency.
- 20 CFR 416.926a(i)(3).

The DDB found that petitioner has mild problems with interpreting social issues and using an adequate vocabulary to communicate. Thus the DDB concluded that petitioner has less than marked limitations in this domain. I, however, found the testimony of petitioner's mother to be more detailed and persuasive than the paper record available to the DDB.

The testimony of Petitioner's mother was that Petitioner cannot make eye contact with people, cannot talk to strangers, even if with her parents. She cannot, for example, order something at a restaurant even if parents are present. She plays or gravitates to children younger than she is by approximately 4 years. She prefers independent activities to participation in activities with her peers. Her language/communication skills are very simplistic. Relating these problems to the standards noted above leads me to conclude that petitioner has a marked limitation in a second domain.

I do note that:

- In order to be eligible for Wisconsin Medicaid through the Katie Beckett Program, a child must meet ALL of the following criteria:
1. Be under 19 years of age;
 2. Be disabled by standards in the Social Security Act;
 3. Be a United States citizen or have acceptable immigration status;
 4. Be a Wisconsin resident;
 5. Live at home with their family;
 6. Require a [level of care](#) (PDF, 134 KB) at home that is typically provided in a hospital or nursing facility;
 7. Be provided safe and appropriate care in the family home;
 8. Not have income in their name in excess of the current standards for a child living in an institution;
 9. Not incur a cost at home to the Wisconsin Medicaid program that exceeds the cost Medicaid would pay if the child were in an institution.
- Wisconsin Department of Health Services website regarding the Katie Beckett program.*
<http://www.dhs.wisconsin.gov/children/kbp/index.htm>

By concluding that Petitioner does meet the Social Security disability criteria I do not wish to give her parents the impression that she meets all the other eligibility criteria. The other criteria were not, however, the subject of this hearing and are not, therefore, within the Division of Hearings and Appeals scope of authority unless and until the department has evaluated them and made a decision that is appealed.

CONCLUSIONS OF LAW

1. Petitioner's condition does not meet or medically equal the listing at § 112.
2. Petitioner's condition *does* functionally equal the listing because Petitioner has a marked limitation in two domains.

3. Petitioner is disabled for Katie Beckett MA purposes at this time.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to immediately continue the processing of Petitioner's Katie Beckett MA application, in accord with Conclusions of Law #2 and #3 above.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

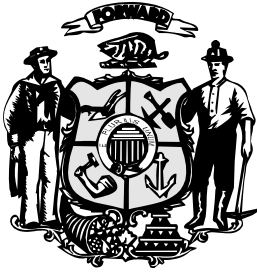
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of May, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 16, 2013.

Waukesha County Health and Human Services
Bureau of Long-Term Support
Division of Health Care Access and Accountability